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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

FILED

DARON CALDWELL,

Plaintiff,

-VS-

Case No: 04-CV-74905 AUG 22 P4:13

HON. VICTORIA A. ROBERTS

Magistrate Judge Virginia M. Morgan

CITY OF DETROIT, a Municipal Corporation,  
ELLA BULLY-CUMMINGS, Chief of Police,  
Deputy Chief HAROLD CURETON,  
Commander CRAIG SWARTZ, Detroit Police Officer  
MOISES JIMENEZ, Detroit Police Officer DERRICK THOMAS,  
Detroit Police Officer KENNETH GARDNER,  
Detroit Police Officer DAVID ANDERSON,  
Detroit Police Officer DARRELL JONES,  
Detroit Police Officer KEITH MARSHALL,  
Detroit Police Officer RICHARD SWARTZ,  
Detroit Police Officer M. SEAGRAM,  
Detroit Police Officer G. PRZYBYLA,  
Detroit Police Officer D. IDINE,  
Detroit Police Officer K. MILLER,  
Detroit Police Officer D. THOMAS,  
Detroit Police Officer A. JOHNSON,  
Detroit Police Officer CRAIG STEWART,  
Sergeant B. HIGGINS, and other  
JOHN DOE POLICE OFFICERS, Jointly and Severally,

Defendants.

MARLON BLAKE EVANS (P49541)  
Marlon Blake Evans & Associates  
Attorney for Plaintiff  
535 Griswold, Suite 1630  
Detroit, MI 48226  
(313) 962-2335

KRYSTAL A. CRITTENDON (P49981)  
City of Detroit Law Department  
Atty for Def. Detroit & Bully-Cummings  
1650 First National Building  
Detroit, MI 48226  
(313) 237-3018

**DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S  
RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT  
AND/OR FOR DISMISSAL OF PLAINTIFF'S CAUSE**

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served on the attorney(s) of record of all parties to the above cause by mailing the same to them at their respective addresses as disclosed by the paying of record herein, with postage fully prepaid thereon.

August 22, 2005  
The statement above is true to the best of my knowledge, information and belief.

Imani Ceryette

NOW COME Defendants, by and through their attorney, KRYSTAL A. CRITTENDON, and for their *Motion to Strike Plaintiff's Response to Defendants' Motion for Summary Judgment and/or for Dismissal of Plaintiff's Cause*, pursuant to F.R. Civ. P. 16(f) and 41(b), submit the following:

1. Defendants filed a *Motion for Summary Judgment* which is pending for motion hearing before this Honorable Court on September 26, 2002;
2. At a Scheduling Conference held on July 22, 2005, this Court entered a Scheduling Order, ordering that "Plaintiff's Response brief to Defendants' Motion for Summary Judgment must be filed *and in opposing counsel's hands* by: **August 8, 2005.**" (See Exhibit A - Order Setting Briefing Schedule and Hearing Date);
3. Plaintiff filed his *Response in Opposition to Defendants' Motion for Summary Judgment* on **August 11, 2005**, *three (3) days* after the filing deadline set by this Honorable Court. Moreover, Plaintiff did not serve Defendants with a copy of the responsive brief until **August 18, 2005**, *ten (10) days* after the service deadline set by the Court. (See Exhibit B - Date stamp on Plaintiff's responsive brief from City of Detroit Law Department);
4. Additionally, Plaintiff's responsive brief is nonconforming, in that it exceeds the twenty (2) page limit set by F.R. Civ. P., LR 7.1(c)(3)(A), and was not double-spaced;
5. Defense counsel did not receive the Responsive brief until she returned to work on Monday, August 22, 2005, the date set by this Court as the deadline for filing and service of a Reply Brief, and insufficient time existed to prepare a reply to Plaintiff's responsive brief;
6. F.R. Civ. P. 16(f) provides, in pertinent part, that "(I)f a party or party's attorney fails to obey a scheduling or pretrial order, . . .the judge, upon motion or the judge's own initiative, may

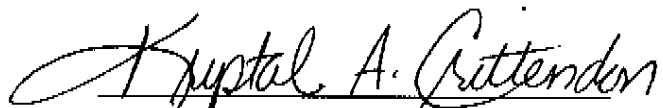
make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), (D).”

7. F.R. Civ. P. 41(b) provides that “(F)or failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant.”

8. As Plaintiff has failed to comply with the Order Setting Briefing Schedule set by this Honorable Court and Defendants are extremely prejudiced by this failure, then Defendants move for to strike Plaintiff’s responsive brief and for dismissal of Plaintiff’s cause.

**WHEREFORE**, Defendants respectfully request that this Honorable Court grant its *Motion to Strike Plaintiff’s Response to Defendants’ Motion for Summary Judgment and/or for Dismissal of Plaintiff’s Cause*, for the reasons stated above.

Respectfully submitted,



**KRYSTAL A. CRITTENDON (P49981)**  
Assistant Corporation Counsel  
CITY OF DETROIT LAW DEPARTMENT  
1650 First National Building  
Detroit, MI 48226  
(313) 237-3018

DATED: August 22, 2005

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**DARON CALDWELL,**

Plaintiff,

-vs-

Case No: 04-CV-74998

HON. VICTORIA A. ROBERTS

Magistrate Judge Virginia M. Morgan

**CITY OF DETROIT, a Municipal Corporation,  
ELLA BULLY-CUMMINGS, Chief of Police,  
Deputy Chief HAROLD CURETON,  
Commander CRAIG SWARTZ, Detroit Police Officer  
MOISES JIMENEZ, Detroit Police Officer DERRICK THOMAS,  
Detroit Police Officer KENNETH GARDNER,  
Detroit Police Officer DAVID ANDERSON,  
Detroit Police Officer DARRELL JONES,  
Detroit Police Officer KEITH MARSHALL,  
Detroit Police Officer RICHARD SWARTZ,  
Detroit Police Officer M. SEAGRAM,  
Detroit Police Officer G. PRZYBYLA,  
Detroit Police Officer D. IDINE,  
Detroit Police Officer K. MILLER,  
Detroit Police Officer D. THOMAS,  
Detroit Police Officer A. JOHNSON,  
Detroit Police Officer CRAIG STEWART,  
Sergeant B. HIGGINS, and other  
JOHN DOE POLICE OFFICERS, Jointly and Severally,**

Defendants.

---

**MARLON BLAKE EVANS (P49541)**  
**Marlon Blake Evans & Associates**  
Attorney for Plaintiff  
535 Griswold, Suite 1630  
Detroit, MI 48226  
(313) 962-2335

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**KRYSTAL A. CRITTENDON (P49981)**  
**City of Detroit Law Department**  
Atty for Def. Detroit & Bully-Cummings  
1650 First National Building  
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**DEFENDANTS' BRIEF IN SUPPORT OF THEIR MOTION TO STRIKE PLAINTIFF'S  
RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT  
AND/OR FOR DISMISSAL OF PLAINTIFF'S CAUSE**

NOW COME Defendants, by and through their attorney, KRYSTAL A. CRITTENDON, and for their *Brief in Support of Their Motion to Strike Plaintiff's Response to Defendants' Motion for Summary Judgment and/or for Dismissal of Plaintiff's Cause*, pursuant to F.R. Civ. P. 16(f) and 41(b), submit the following:

### **PROCEDURAL HISTORY**

Defendants filed a *Motion for Summary Judgment* which is pending for motion hearing before this Honorable Court on September 26, 2002. At a Scheduling Conference held on July 22, 2005, this Court entered a Scheduling Order, ordering that "Plaintiff's Response brief to Defendants' Motion for Summary Judgment must be filed *and in opposing counsel's hands* by: **August 8, 2005.**" (See Exhibit A - Order Setting Briefing Schedule and Hearing Date).

Plaintiff filed his *Response in Opposition to Defendants' Motion for Summary Judgment* on **August 11, 2005**, *three (3) days* after the filing deadline set by this Honorable Court. Moreover, Plaintiff did not serve Defendants with a copy of the responsive brief until **August 18, 2005**, *ten (10) days* after the service deadline set by the Court. (See Exhibit B - Date stamp on Plaintiff's responsive brief from City of Detroit Law Department). For the following reasons, *Plaintiff's Response to Defendants' Motion for Summary Judgment* should be stricken and Plaintiff's cause against Defendants should be dismissed.

### **ARGUMENT**

#### **I. Plaintiff's Cause Should be Dismissed for Failure to Comply with this Honorable Court's Scheduling Order.**

A party to civil litigation may not simply disregard Orders of the Court and civil practice policies set by the Federal Rules of Civil Procedure. F.R. Civ. P. 16(f) provides, in pertinent part,

that "(I)f a party or party's attorney fails to obey a scheduling or pretrial order, . . .the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, an among others any of the orders provided in Rule 37(b)(2)(B), (C), (D)." Moreover, F.R. Civ. P. 41(b) provides that "(F)or failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant."

In the case at hand, Plaintiff's response to *Defendant's Motion for Summary Judgment* was inexplicably filed *three (3) days* after the time proscribed by this Honorable Court's Scheduling Order and served upon Defendants *ten (10) days* after the time proscribed. Defense counsel did not receive the Responsive brief until she returned to work on Monday, August 22, 2005, the date set by this Court as the deadline for filing and service of a Reply Brief, and insufficient time existed to prepare a reply to Plaintiff's responsive brief. As Plaintiff has failed to comply with the Order Setting Briefing Schedule set by this Honorable Court and Defendants are extremely prejudiced by this failure, then Defendants move for to strike Plaintiff's responsive brief and for dismissal of Plaintiff's cause.

## **II. Plaintiff's Responsive Brief Should be Stricken Because It Is Non-Conforming.**

Even assuming, arguendo, that Plaintiff's responsive brief should not be stricken as untimely, then the brief should still be stricken as non-conforming. Plaintiff's responsive brief is nonconforming, in that it exceeds the twenty (2) page limit set by F.R. Civ. P., LR 7.1(c)(3)(A), and is not double-spaced, as required by the Federal Rules of Civil Procedure. The brief does not admit, deny or neither admit nor deny the allegations contained in Defendants Motion and the brief is thirty (30) pages long, non-double spaced. This non-conforming brief should be stricken for these reasons,

as well.

**WHEREFORE**, Defendants respectfully request that this Honorable Court grant its *Motion to Strike Plaintiff's Response to Defendants' Motion for Summary Judgment and/or for Dismissal of Plaintiff's Cause*, for the reasons stated above.

Respectfully submitted,



**KRYSTAL A. CRITTENDON (P49981)**  
Assistant Corporation Counsel  
CITY OF DETROIT LAW DEPARTMENT  
1650 First National Building  
Detroit, MI 48226  
(313) 237-3018

DATED: August 22, 2005

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on July 26, 2005.

s/Linda Vertriest  
Deputy Clerk



04-74995

Officer

A-B

A

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DARON CALDWELL,

Plaintiff,

-vs.-

Case No. 04-CV-74998

HON. VICTORIA A. ROBERTS

Magistrate Judge Virginia M. Morgan

CITY OF DETROIT, a Municipal Corporation,  
ELLA BULLY-CUMMINGS Chief of Police,  
Deputy Chief HAROLD CURETON, Commander  
CRAIG SCHWARTZ, Detroit Police Officers MOISES JIMENEZ,  
DERRICK THOMAS, KENNETH GARDNER,  
DAVID ANDERSON, DARRELL JONES,  
KEITH MARSHALL, M. SEAGRAM,  
G. PRZYBYLA, K. MILLER, A. JOHNSON,  
CRAIG STEWART, Sergeant B. HIGGINS,  
and other JOHN DOE POLICE OFFICERS, Jointly and Several

Defendants.

**FILED**

AUG 11 2005

CLERK'S OFFICE, DETROIT-PSG  
U.S. DISTRICT COURT

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KRYSTAL A. CRITTENDON (P49981)  
City of Detroit Law Department  
Attorney for Defendants  
1650 First National Building  
Detroit, MI 48226  
(313) 237-3018

**PLAINTIFF'S RESPONSE IN OPPOSITION TO  
DEFENDANTS' MOTION FOR SUMMARY JUDGEMENT**

NOW COMES Plaintiff Daron Caldwell, by and through his attorney Marlon Blake Evans, and pursuant to E. D. Mich. L. R. 5.1 and 7.1 and Fed. submits this response in opposition to the Motion for Summary Judgment of the City of Detroit, Detroit Chief of Police Ella Bully-Cummings, the Detroit Police Officers (identified in caption), and hereby requests the Court to grant summary judgment pursuant to Federal Rule 56 and/or for summary judgment pursuant to Federal Rule 56 for the following reasons:

Plaintiff, Mr. Caldwell brought this lawsuit (Exhibit A) against Defendants pursuant to 42 USC section 1983 for damages arising from

*K. Crittendon*

*9:51 A*

**RECEIVED**

AUG 11 2005

CITY OF DETROIT  
LAW DEPARTMENT

B

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DARON CALDWELL,

Plaintiff

vs

Case No: 04-74998

Honorable Victoria A. Roberts

CITY OF DETROIT, ET AL,

Defendant.

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**ORDER SETTING BRIEFING SCHEDULE AND HEARING DATE**

On July 22, 2005, the Court held a Scheduling Conference. In attendance were Marlon Blake Evans for the Plaintiff and Krystal Crittendon and Allan Charlton for the Defendants. Based on the discussion held, the Court sets the following schedule:

Plaintiff's Response brief to Defendants' Motion for Summary Judgment must be filed and in opposing counsel's hands by: August 8, 2005.

Defendants' Reply brief must be filed an in opposing counsel's hands by: August 22, 2005.

The hearing on the Defendants' Motion for Summary Judgment will be held on **Monday, September 26, 2005 at 2:00 p.m.**

**IT IS SO ORDERED.**

s/Victoria A. Roberts

Victoria A. Roberts

United States District Judge

Dated: July 26, 2005